IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.4674/1989

Bal Mukund Arora.

vs.

State of Rajasthan and others.

Date : 6.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Anand Purohit, for the petitioner.

Mr.MC Bhoot) for the respondents.
Mr.SN Tiwari, Dy.GA)

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 16.11.1989 passed by the Mining Engineer (Recovery), Udaipur Division, Udaipur and the order dated 14.12.1989 passed by the Board of Revenue. By order dated 16.11.1989, the petitioner's objections submitted before the Mining Engineer were rejected

whereas the Board of Revenue dismissed the revision petition of the petitioner vide order dated 14.12.1989.

Brief facts of the case are that against the Government dues, recovery proceedings were initiated against the petitioner and in consequence thereof, the petitioner's immovable property was attached on 15.1.1982. The sale proclamation was published on 6.5.1985 and the date for auction of the immovable property was fixed as 10.6.1985. Because of the objections submitted by the purchasers from the petitioner, part of the property mentioned in the sale proclamation was deleted. Auction was conducted on 10.6.1985 and the highest bid given was Rs.1,51,000/-. The petitioner submitted objection petition before the District Collector, Udaipur on 10.6.1985 itself which was forwarded by the District Collector on the same day to Mining Engineer, Udaipur with a direction that before proceeding for auction, the objections raised by the petitioner may be considered and decided. The objections raised by the petitioner were considered and rejected by the Mining Engineer on the same day. The bidder deposited 1/4th of the bid amount on the same day. The petitioner challenged the auction proceedings by filing revision petition before the Board of Revenue wherein the Board of Revenue passed interim order on 12.6.1985 and stayed further proceedings in pursuance

of the auction. The Board of Revenue ultimately dismissed the petitioner's revision petition vide order dated 14.12.1989. The petitioner thereafter submitted objection petition before the Mining Engineer which is purported to be under Section 247 of the Rajasthan Land Revenue Act, 1956 (for short “the Act of 1956”). At the same time, the petitioner also submitted a writ petition before this Court which is D.B.Civil Writ Petition No.3977/1988. Said writ petition was dismissed by the Division Bench vide order dated 13.9.1989 on the ground that since the petitioner has also availed alternate remedy by filing objections under Section 247 of the Act of 1956, therefore, the petitioner should exhaust that remedy first. The Mining Engineer, after dismissal of the writ petition of the petitioner, considered the objection submitted by the petitioner against the sale of property of the petitioner and dismissed the same vide order dated 16.11.1989 on the ground that the objection could have been filed within 30 days from the date of sale but in the present case, the objections have been filed after more than 3½ years from the sale. Said order of Mining Engineer dated 16.11.1989 was challenged by the petitioner by filing revision petition before the Board of Revenue. The Board of Revenue vide order dated 14.12.1989 upheld the decision of the Mining Engineer and held that the objections filed beyond 30 days could not have been

entertained as the same have been filed after inordinate delay of 3½ years.

The petitioner aggrieved of the above orders dated 16.11.1989 and 14.12.1989, has preferred this writ petition.

Learned counsel for the petitioner vehemently submitted that as per Section 239 of the Act of 1956, the sale could have been conducted only after the expiry of 30 days from the date of publication of the sale proclamation. As per Section 239(1), the Mining Engineer was not empowered to conduct the sale and sale could have been conducted by the Collector or Assistant Collector or Tehsildar specially appointed by the Collector. In this case, the sale has been conducted within few days of the publication of sale proclamation, therefore, it is void. It is also submitted that though the bidder deposited 1/4th amount on the same day but did not deposit the remaining amount within 15 days, therefore, the Collector could have considered this aspect.

Learned counsel for the petitioner further vehemently submitted that the petitioner thereafter deposited the entire amount though it was during the pendency of this writ petition and copy of those two receipts dated 26.4.2004 has been placed on record by the petitioner. In view of the above, the petitioner is

entitled to get his property back and the sale in favour of the purchaser be quashed.

Learned counsel for the petitioner relied upon the Division Bench judgment of this Court delivered in State of Rajasthan and another vs. Mahendra Kumar and others (D.B. Civil Special Appeal (Writ) No.1116/2000) decided on 27.9.2004. According to learned counsel for the petitioner, in the above case also, the Division Bench of this Court in almost identical facts and circumstances held that the bidder if has deposited the amount is entitled to at the most refund but when there was no dues or default, then the Collector should not have confirmed the sale.

Learned counsel for the petitioner further relied upon the Division Bench judgment of this Court delivered in the case of Ganesh Ram vs. Collector, Pali reported in 1985 RLW 329 wherein the sale was conducted by the Land Revenue Inspector. This Court held that the Land Revenue Inspector could not have conducted the sale in the absence of he being appointed by the Collector.

Learned counsel for the respondents pointed out that firstly, the writ petition of the petitioner is not maintainable in view of the fact that the petitioner has not placed on record the relevant documents on the basis of which the petitioner is

seeking relief of quashing of the sale. Secondly, the petitioner concealed material facts in the writ petition. In addition to above, according to learned counsel for the respondents, the petitioner cannot raise any ground to challenge the sale effected by the Mining Engineer because of the reason that the petitioner's objection petition was dismissed by the Mining Engineer by the order dated 16.11.1989 on the ground of limitation and the Board of Revenue also dismissed the revision petition upholding the finding recorded by the Mining Engineer about bar of limitation. Therefore, the only question before this Court can be whether the petition filed by the petitioner was barred by law or not ? If the petition was barred by law, the petitioner cannot challenge the sale.

On merits, learned counsel for the respondents pointed out that there is no illegality in the sale conducted by the Mining Engineer. It is submitted that the property in question was attached in the presence of the petitioner on 15.1.1982. The petitioner did not pay any amount. The sale proclamation was issued by the competent authority as back as on 6.5.1985. Thereafter, it conducted auction and the respondent purchaser gave highest bid and deposited 1/4th of the amount. Because of the stay order passed by the Board of Revenue in the petitioner's revision petition, the respondents could

not have deposited the amount before dismissal of the revision petition and the auction authority did not accept the 3/4th amount from the petitioner because of stay order obtained by the petitioner himself from the Board of Revenue.

Learned counsel for the respondent also submitted that after completion of sale under the Act of 1956, no amount could have been accepted by the Mining Department from the petitioner and if the petitioner paid any amount and respondent accepted that amount, then that was absolutely illegal because of the reason that none of the amount was due against the demand raised by the respondent department as that was already paid by the respondent/purchaser of the property. Therefore, the action of the respondent in accepting the bid is collusive and cannot be recognised by law.

I considered the submission of learned counsel for the parties and perused the facts of the case.

The facts which have been referred in detail above clearly shows that the sale certificate was issued by the competent authority for recovery of the amount against the petitioner and the petitioner's property was attached on 15.1.1982, the sale proclamation was issued on 6.5.1985 as referred in the order of Mining Engineer dated 16.11.1989. To disprove this fact, the

petitioner did not submit the copy of the sale proclamation to show that the sale was conducted within 30 days from the date of order. Be it as it may be, it appears from the order of the Mining Engineer that thereafter, the objections of the petitioner were also considered by the Mining Engineer and the part of the properties were removed from the property to be auctioned. The petitioner's objections were considered and decided by the Mining Engineer and this fact is also mentioned in the order dated 16.11.1989. Said order of rejection of the objections of the petitioner for sale is also not placed on record and it is not the case of the petitioner that he challenged the said order. Not only this, the Board of Revenue dismissed the revision petition filed by the petitioner to challenge the auction of the property in dispute and that revision petition was dismissed by the Board of Revenue on 1.11.1988. The petitioner has not challenged the order of the Board of Revenue dated 1.11.1988. Be it as it may be, the petitioner tried to invoke the jurisdiction under Article 226 to challenge the auction sale but the said writ petition was dismissed by the Division Bench of this Court on the ground that the petitioner already submitted objection petition under Section 247 of the Act of 1956 and, therefore, he should exhaust the said remedy first. Thereafter, the petitioner pursued his objection petition before the

Mining Engineer. It will be worthwhile to mention here that the petitioner's objection petition was dismissed by the Mining Engineer on the ground that the sale could have been challenged only within 30 days from the date of sale under Section 247 of the Act of 1956.

The procedure for collection of the public demand is prescribed under Chapter X of the Act of 1956. Under Section 231, the immovable property of the defaulter can be attached and proclamation of attachment is issued under Section 233. The attached property can be put to auction under Section 239. Sub-Section (1) of Section 239 provides that every sale under this Chapter shall be made either by the Collector in person or by an Assistant Collector or Tehsildar specially appointed by him in this behalf whereas Sub-Section (2) of Section 239 provides that no such sale shall take place on a Sunday or other authorised holiday or until after the expiration of at least thirty days from the date on which the proclamation thereof was issued.

Any person who intends to pay all dues may apply to the District Collector under Section 246 of the Act of 1956 and get the sale set aside but its pre-condition is deposit of the entire dues before that application seeking cancellation of sale can be entertained. Admittedly, the petitioner never applied under Section 246 for setting aside the sale by depositing all the arrears. The petitioner never intend

to take the benefit under Section 246 but according to the petitioner, he submitted petition under Section 247 of the Act of 1956. It will be relevant to quote Section 247 of the Act of 1956 :-

> "247. Application to set aside the sale for irregularity etc. - At any time within thirty days from the date of the sale, an application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.
>
> <u>But no sale shall be set aside on such ground unless the applicant proves the satisfaction of the Collector that he has substantial injury by reason of such irregularity of mistake.</u>"

A perusal of Section 247 makes it clear that an application under Section 247 could have been filed within thirty days from the date of the sale. For the "date of sale", I may refer Sections 243 and 246 of the Act of 1956. Section 243 provides that the full amount of purchased property shall be deposited on or before the fifteenth day from the "date of sale". Sections 246 and 247 both provides that the application can be filed within 30 days for specific purpose referred in Sections 246 and 247 respectively but within 30 days. As per Section 246, if the defaulter deposits the

entire amount and prays for setting aside the sale, then the “sale” can be set aside. Meaning thereby, the Legislature clearly mentions in Section 246 itself that on deposit of the amount by the petitioner, the “sale” can be set aside, then this clearly demonstrates that the auction sale stands concluded with the operation of Section 248 and harmonious construction is that the date of sale is date of auction and passing of title with the confirmation of sale under Section 248, will make title effective from the date of sale that is vesting of title will be effective from the date of auction.

Section 247 also clearly indicates that irrespective of the fact whether the sale has been confirmed by the Collector or not, the defaulter may submit the objection under Section 247, then that means that the confirmation of sale has no relevance for the purpose of submitting application under Section 247. In the same way, Section 248 clearly states that on the expiry of 30 days from the date of sale, if no such application as is mentioned in Section 246 or 247 has been made or if such application has been made and rejected, then the Collector shall pass an order confirming the sale. This also clearly indicates that the “date of sale” for the purpose of computing limitation under Sections 246 and 247 is the same date when the auction takes place and confirmation is

subsequent to sale and confirmation of sale is not the “date of sale” referred in these Sections.

In view of the above reasons, the view taken by the Mining Engineer as well as the Board of Revenue is in accordance with law and both have rightly interpreted the provisions of Section 247 and rightly held that the objections raised by the petitioner were not given in time and that too were delayed by inordinate delay of 3½ years.

So far as contention of the petitioner that there was material irregularity or mistake in publishing the sale proclamation or in conducting the sale are concerned, they are the subjects covered under Section 247. The petitioner's right to challenge the sale by filing separate suit was also protected by the Act of 1956. Limited objections which are material irregularities or mistake in publishing or conducting the sale alone can be decided under Section 247 and for these mistakes or irregularities, if the period of limitation of one month has been prescribed, then within that period only, the authority itself could have examined the allegation of material irregularity or mistake in publishing or conducting the sale. In view of the above reason and looking to the limited scope under Section 247, the petitioner cannot have any grievance that his objections were not considered on

the ground of inordinate delay.

Apart from it, from the facts, it appears that the petitioner could not make out any ground for his substantial injury as the property in question was put to auction for a consideration of Rs.1,51,000/-. The petitioner's own case, as raised in his telegram dated 10.6.1985 is that the property could fetch Rs.2,50,000/-. Part of property was also excluded from the sale proceedings, then the property was not sold on low price. Otherwise also, low price itself cannot be a ground to challenge the sale.

The petitioner's contention that the Mining Engineer was not authorised to conduct the sale was not raised by the petitioner in his objection dated 10.6.1985 as is clear from the language of the telegram dated 10.6.1985 wherein only objection was that the sale is being conducted in less than 30 days period. Be it as it may be, detail objections submitted by the petitioner dated 10.6.1985 have not been placed on record.

The judgment relied upon by learned counsel for the petitioner in the case of Mahendra Kumar (supra) was rendered in entirely different fact situation which is that the Division Bench clearly held as under :-

> “We are in agreement with the learned Single Judge that in these facts and circumstances that the

provisions of Sections 246 and 247 of the Rajasthan Land Revenue Act have no application as in the instant case, there was no subsisting and determined amount of debt for the discharge or realisation of which the auction was to be held of the property. On the date of confirmation of the sale i.e. 24.12.93 there was no existing debt in view of the judgment dated 4.11.93."

In the facts of the case decided by the Division Bench in the aforesaid case of Mahendra Kumar, it is clear that the original demand itself was quashed by the High Court and, therefore, the Division Bench observed that the Collector could not have confirmed the sale as the amount was not due. Here in this case, the liability against the petitioner in the demand raised is concerned, that was not only challenged but is admitted liability.

So far as the petitioner's deposit of the amount with the mining department, that too during the pendency of the writ petition in the year 2004, is concerned, that appears to be absolutely illegal and if the said amount was deposited against the demand in question. Then that was apparently because of some collusion with the officers of the State who accepted the amount form the petitioner when they already

auctioned the property of the petitioner for recovery of the amount and challenge to sale was dismissed by the Mining Engineer and the Board of Revenue long back rejected the petitioner's revision, then there was no dues against which the department could have accepted the amount.

In view of the above reasons, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya